

different states does not create a significantly different or enlarged problem.

18. Applicants state further that, under paragraph (b)(15) of Rules 6e-2 and 6e-3(T), the right of an insurance company to disregard Variable Contract owners' voting instructions does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts, and that affiliation does not eliminate the potential, if any, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser. Applicants state that the potential for disagreement is limited by the requirements in Rules 6e-2 and 6e-3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations. If a Participating Insurance Company's decision to disregard Variable Contract owners' instructions represents a minority position or would preclude a majority vote approving a particular change, however, such Participating Insurance Company may be required, at the election of the relevant Portfolio, to withdraw its investment in that Portfolio. No charge or penalty will be imposed as result of such withdrawal.

19. Applicants submit that mixed and shared funding should benefit Variable Contract owners by: (a) eliminating a significant portion of the costs of establishing and administering separate funds; (b) permitting the expansion of the variety of funding options available under existing Variable Contracts; and (c) encouraging more insurance companies to offer Variable Contracts, resulting in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges.

20. Applicants state that there is no reason why the investment policies of the Portfolios with mixed funding would or should be materially different from what they would or should be if the Portfolios funded only variable annuity contracts or variable life insurance policies. Each type of insurance product is designed as a long-term investment program. Moreover, Applicants assert that the Portfolios will continue to be managed in an attempt to achieve their investment objectives, and not to favor any particular Participating Insurance Company or type of insurance product. Applicants therefore argue that there is no reason to believe that conflicts of interest would result from mixed funding.

21. In addition, Applicants assert that the sale of shares of the Trust to Qualified Plans will not increase the potential for material, irreconcilable conflicts of interest between or among different types of investors. Section 817 is the only section in the Code where separate accounts are discussed. Section 817(h) of the Code imposes certain diversification standards on Underlying Funds of Variable Contracts. Treasury regulation 1.817-5(f)(3)(iii) specifically permits "qualified pension or retirement plans" and Separate Accounts to share the same Underlying Fund. Applicants, therefore, have concluded that neither the Code, nor the Treasury regulations or revenue rulings thereunder, present any inherent conflicts of interest between or among Qualified Plan participants and Variable Contract owners if Qualified Plans and the Separate Accounts of Variable Contracts all invest in the same Underlying Fund.

22. Applicants assert that while there are differences in the manner in which distributions are taxed for Variable Contracts and Qualified Plans, these tax consequences do not raise any conflicts of interest. When distributions are made, and the Separate Account or the Qualified Plan is unable to net purchase payments to make the distributions, the Separate Account or the Qualified Plan will redeem shares of the Portfolios at their respective net asset value. The Qualified Plan then will make distributions in accordance with the terms of the Variable Contract.

23. With respect to voting rights, Applicants state that it is possible to provide an equitable means of giving rights to Variable Contract owners and participants in the Qualified Plans. In connection with any meeting of shareholders, the Trust will inform each shareholder, including each Separate Account and Qualified Plan, of the information necessary for the meeting, including their respective share of ownership in the respective portfolios of the Trust. A Participating Insurance Company will solicit voting instructions in accordance with the "pass-through" voting requirement. Qualified Plans and Separate Accounts will each have the opportunity to exercise voting rights with respect to their shares in the Portfolios of the Trust, although only the Separate Accounts are required to pass through their vote to Contract owners. The voting rights provided to Qualified Plans with respect to shares of the Trust would be no different from the voting rights that are provided to Qualified Plans with respect to shares of mutual funds sold to the general public.

24. Applicants argue that the ability of the Portfolios to sell their shares directly

to Qualified Plans does not create a "senior security" as defined by Section 18(g) of the 1940 Act. As noted above, regardless of the rights and benefits of participants under Qualified Plans, or Variable Contract owners under Variable Contracts, the Qualified Plans and the Separate Accounts have rights only with respect to their respective shares of the Portfolio. They can only redeem such shares at their net asset value. No shareholder of the Portfolios has any preference over any other shareholder with respect to distribution of assets or payment of dividends. Applicants state that in absence of an exemption from Section 18(f), all shares of the Trust that will be sold to Separate Accounts or Qualified Plans will be of the same class of shares.

25. Applicants have determined that no conflicts of interest exist between the Variable Contract owners of the Separate Accounts and Qualified Plan participants with respect to the state insurance commissioners' veto powers over investment objectives. The basic premise of corporate democracy and shareholder voting is that not all shareholders may agree with a particular proposal. The state insurance commissioners have been given the veto power in recognition of the fact the insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another fund. Generally, time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. Conversely, the trustee(s) of Qualified Plans or the participants in participant-directed Qualified Plans could make the decision quickly and could implement the redemption of their shares from the Portfolios and reinvest in another funding vehicle without the same regulatory impediments or, as is the case with most Qualified Plans, even hold cash pending suitable investment.

26. Applicants state that they do not see any greater potential for material irreconcilable conflicts arising between the interests of participants under the Qualified Plans and Variable Contract owners of the Separate Accounts from possible future changes in the federal tax laws than that which already exists between Variable Contract owners.

27. Applicants assert that no policy reasons justify prohibiting a separate account funding scheduled and flexible variable life insurance contracts from relying on rule 6e-2. The interests of scheduled premium variable life Contract owners and flexible premium Variable Contract owners and the regulatory frameworks of rules 6e-2 and 6e-3(T) are sufficiently parallel that the